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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Federal Trade Commission,

10 Plaintiff,

11 v.

12 Grand Canyon Education Incorporated, et
13 al.,

14 Defendants.

No. CV-23-02711-PHX-DWL

ORDER

15 Discovery and disclosures in this action may involve the production of records
16 subject to the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g
17 *et seq.* As background, “Congress enacted FERPA to protect the privacy of students and
18 their parents. FERPA conditions the receipt of federal funding by educational institutions
19 or agencies on their compliance with certain procedures concerning the keeping of
20 educational records. These procedures are designed, among other things, to restrict access
21 to students’ educational records by third parties without [consent]. . . . The consent
22 requirement is subject to several exceptions. The most relevant exception . . . allows for
23 disclosure without consent if disclosure is to comply with a judicial order or subpoena and
24 the educational institution has made a reasonable effort at notification. Reasonable efforts
25 to notify must be made in advance of compliance, so that the parent or eligible student may
26 seek protective action. Confidential information may be disclosed if the notification
27 requirements are met and there is a protective order in place restricting disclosure.”
28 *Morgan Hill Concerned Parents Ass’n v. Cal. Dept. of Educ.*, 2015 WL 10939711, *3

1 (cleaned up). *See also* 34 C.F.R. § 99.31(a) (“An educational agency or institution may
2 disclose personally identifiable information from an education record of a student without
3 the consent required by § 99.30 if the disclosure meets [certain conditions]”).

4 Accordingly, pursuant to Fed. R. Civ. P. 26(c), **IT IS HEREBY ORDERED**
5 **THAT:**

6 1. To the extent that documents or information that contain personally
7 identifiable information (“PII”) from an education record of a current or former student of
8 Grand Canyon University (“GCU”), other than directory information as previously
9 designated by GCU in accordance with 20 U.S.C. § 1232g(a)(5), is furnished in discovery
10 and proceedings in this action, this Order provides for disclosure of such material pursuant
11 to a judicial order in compliance with FERPA.

12 2. Nothing in this Order shall be construed to be a finding that, or affect in any
13 way the question of whether, any particular material is properly discoverable or admissible
14 or preclude any party from raising any objections or exercising any rights otherwise
15 available to them, including under the Federal Rules of Civil Procedure, Federal Rules of
16 Evidence, or other applicable federal or state laws or regulations.

17 3. Any Defendant that maintains, in good faith, that a disclosure, document
18 produced during discovery, interrogatory response, or deposition contains PII from
19 education records shall label the record that contains PII as “FERPA Confidential” by
20 stamping the relevant page or portion “FERPA Confidential.”

21 4. Unless the Court orders otherwise or a student has given signed and dated
22 written consent to disclosure (34 C.F.R. § 99.30), PII from documents, interrogatory
23 responses, and disclosures labelled “FERPA Confidential” shall be redacted from any
24 electronic or paper filing with the Court. In order to protect FERPA Confidential
25 information to be used in Court proceedings, the parties shall consider: (i) redacting the
26 confidential documents to remove PII; (ii) coding the documents to substitute a numerical
27 or other designation for the student’s name and other identifiable information about the
28 student or his/her family; and (iii) introducing summary evidence where practicable, which

1 may be more easily redacted.

2 5. The inadvertent failure to designate PII contained in education records as
3 FERPA Confidential prior to production shall be without prejudice to any claim by any
4 Defendant that it is FERPA Confidential and shall not waive that Defendant's ability to
5 secure protection under this Order for such material. In the event Defendants designate
6 material as FERPA Confidential after it has been inadvertently disclosed, the parties shall
7 treat such material as such pursuant to this Order and shall make arrangements to have the
8 materials, including copies, marked "FERPA Confidential."

9 6. If it comes to any Defendant's attention that information or items designated
10 as "FERPA Confidential" do not qualify for protection, that Defendant must promptly
11 notify all other parties that it is withdrawing the designation.

12 7. Except in instances in which an individual has given a signed and dated
13 written consent to disclosure (34 C.F.R. § 99.30), PII in in documents or responses labelled
14 as "FERPA Confidential" may only be viewed by (a) counsel to a party of this action,
15 including all counsel of record throughout the litigation, outside counsel of record, and
16 other attorneys, paralegals, secretaries, and support staff employed in the office of any
17 counsel of record; (b) independent experts and stenographic and clerical employees
18 associated with experts. (Prior to receiving any FERPA Confidential information of the
19 Defendants, the expert must execute a copy of the "Agreement to Be Bound By Order on
20 Disclosure of Information in Education Records," attached hereto as Exhibit A. Counsel
21 for the party that retained the expert must retain executed copies of such exhibits.); (c) the
22 Court and any Court staff and administrative personnel; (d) court reporters and entities that
23 provide litigation support services (*e.g.*, photocopying; videotaping; translating; preparing
24 exhibits or demonstrations; organizing, storing, retrieving data in any form or medium) and
25 their employees and subcontractors.; (e) any person indicated on the face of the document
26 to be its author or co-author, or any person identified on the face of the document as one to
27 whom a copy of such document was sent before its production in this action; and (f)
28 employees of GCU or Defendant Grand Canyon Education, Inc. ("GCE") who testify at

1 deposition or at trial.

2 8. Disclosure of PII from education records labelled “FERPA Confidential”
 3 pursuant to this Order shall be only for the purposes of the preparation and hearing of this
 4 proceeding, or any appeal, therefrom, and for no other purpose whatsoever, provided,
 5 however, that the FTC may, subject to taking appropriate steps to preserve the
 6 confidentiality of such material, use or disclose PII as provided by Sections 4.9-4.11 of its
 7 Rules of Practice; 16 C.F.R. §§ 4.9-4.11, Sections 6 and 21 of the FTC Act, 15 U.S.C. §§
 8 46(f) and 57b-2; or any other legal obligation imposed upon the FTC.

9 9. Prior to disclosure of PII from education records in disclosures or responses
 10 to discovery requests, Defendants shall send notice pursuant to 20 U.S.C. § 1232g(b)(2)(B)
 11 and 34 C.F.R. § 99.31(a)(9) to students whose education records are relevant to such
 12 request or contain information that Defendants would disclose in their response.
 13 Defendants shall send such notice no later than fifteen (15) days from: (a) the date by which
 14 the responding party is required to serve its response to the request; or (b) if a party objects
 15 to such request, the date of the parties’ resolution of the objection; or (c) if the parties are
 16 unable to resolve the objection, the date the Court orders a response to the request; or (d)
 17 in the case of disclosures, the date of this Order.

18 10. The notices shall include the following:

19 Education records of Grand Canyon University that identify you and
 20 other Grand Canyon University students may be disclosed to the
 21 Federal Trade Commission (FTC), court personnel, and attorneys for
 22 the parties in the course of a lawsuit titled *Federal Trade Comm’n v.*
 23 *Grand Canyon Education, Inc., et al*, Case No. CV-23-02711-PHX-
 24 DWL, currently pending in the United States District Court for the
 25 District of Arizona, and to experts or support personnel involved in this
 26 suit. This notice gives you advance notice of the potential release of
 27 these records in accordance the Family Educational Rights and Privacy
 28 Act (FERPA), 20 U.S.C. § 1232g, and 34 C.F.R. § 99.3. This statute
 permits the disclosure of education records to comply with a lawfully
 issued court order or subpoena when a reasonable effort to notify the
 student is made in advance.

A court order in this lawsuit limits the use of education records that

1 identify you or other students (“Personally Identifiable Information”)
 2 to this lawsuit and restricts disclosure to protect your privacy. The
 3 Court’s order provides that information that identifies an individual
 4 student must be removed from the records if they are filed in the public
 5 court record. The Court’s order also provides that you have the
 6 opportunity to object to disclosure of information that identifies you if
 you conclude that the Court’s order limiting access to such information
 does not adequately protect the education records that identify you.

7 Under the Court’s order, you are permitted twenty (20) days from this
 8 Date of Notice to object to the court’s order. To object, you or an
 9 attorney acting on your behalf must submit a letter to the address below.
 Your objection letters must include substantial reasons for objection
 and reach the Court at the physical address provided below.

10 HONORABLE DOMINIC W. LANZA
 11 RE: FERPA Objection
 12 United States District Court
 13 Sandra Day O’Connor U.S. Courthouse, Suite 621
 14 U.S. District Court for the District of Arizona
 401 West Washington Street, SPC 46
 15 Phoenix, AZ 85003-2151

16 Please ensure that any objections to the production of the requested
 17 records will arrive at the Court’s mailing address within twenty (20)
 18 days from the Date of Notice. All objections will be evaluated by the
 Court upon receipt and you will be notified of the status of your
 objection.

19 Court employees cannot provide you with legal advice. Grand Canyon
 20 University, Grand Canyon Education, Inc., and its employees and
 21 attorneys are not permitted to provide you with legal advice or guidance
 22 concerning responding to this notice. For additional information,
 please visit the Court’s website at <https://www.azd.uscourts.gov/>.

23
 24 11. Defendants shall notify the students whose education records are potentially
 25 subject to disclosure by electronic mail or by first-class mail sent to the student’s last
 26 known address. If Defendants are not reasonably able to notify any student(s) by email or
 27 first-class mail, Defendants may notify such student(s) in a manner that is reasonable under
 28 the circumstances. But in no event shall Defendants be excused from complying with

1 FERPA's notice requirements.

2 12. Counsel for Defendants shall file a Certificate of Service indicating that
3 notices have been sent and the deadline given in the notice for students to object. This
4 Certificate will not disclose the identities of the students who received the notice. The
5 Court will provide: (a) the Defendants with the names of any individuals who submit an
6 objection during the period set forth in the notice and (b) Plaintiff with the number of
7 individuals who submit an objection during such period.

8 13. Records or responsive information that identifies a student who does not
9 submit an objection during the twenty (20) day objection period will promptly be produced
10 to satisfy discovery obligations unless the records or responses are being withheld pending
11 resolution of objections or privileges unrelated to FERPA. These records will be released
12 without redactions and will include all PII. If a student requests protective action during
13 the 20-day period, their records will not be released without further Court instructions.

14 Dated this 7th day of October, 2024.

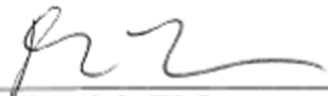
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18 _____
19 Dominic W. Lanza
20 United States District Judge
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EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Federal Trade Commission,

Plaintiff,

v.

Grand Canyon Education, Inc., *et al.*,

Defendants.

No. CV-23-02711-PHX-DWL

**AGREEMENT TO BE BOUND BY
ORDER ON DISCLOSURE OF
INFORMATION IN EDUCATION
RECORDS**

I, _____, declare and say that:

1. I am employed as _____ by _____.
2. I have read the order on disclosure of information in education records (the “Order”) entered in *Federal Trade Commission v. Grand Canyon Education, Inc.*, No. CV-23-02711-PHX-DWL (D. Ariz.), and have received a copy of the Order.
3. I promise that I will use any and all “FERPA Confidential” information, as defined in the Order, given to me only in a manner authorized by the Order, and only to assist Counsel in the litigation of this matter.
4. I promise that I will not disclose or discuss such “FERPA Confidential” information with anyone other than the persons described in paragraph 7 of the Order.

1 5. I acknowledge that, by signing this agreement, I am subjecting myself to the
2 jurisdiction of the United States District Court for the District of Arizona with respect to
3 the enforcement of the Order.

4 6. I understand that any disclosure or use of “FERPA Confidential” information
5 in any manner contrary to the provisions of the Protective Order may subject me to
6 sanctions for contempt of court.

7
8 7. I will return all materials containing “FERPA Confidential” information (as
9 defined in the Order) to the attorney who provided it to me, upon request of that attorney,
10 and I shall not retain any copies of materials labelled “FERPA Confidential” or any
11 information contained therein.

12 I declare under penalty of perjury that the foregoing is true and correct.

13
14
15
16 Date: _____

Signature